



# OLR RESEARCH REPORT

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## **INHERITANCE RIGHTS OF POSTHUMOUSLY CONCEIVED CHILDREN**

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You asked about the inheritance status of children conceived after a parent's death in Connecticut in light of the recent U.S. Supreme Court case, *Astrue v. Capato*, No. 11-159 (2012).

The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered as one.

### **SUMMARY**

In *Astrue v. Capato*, the U.S. Supreme Court found that twins conceived after their father's death were ineligible for Social Security survivor benefits. The Court agreed with the Social Security Administration (SSA) that, in order to be eligible for benefits, a person must either qualify as a child of the deceased insured parent under state intestacy laws (the laws governing succession to estates of those who die without a valid will) or satisfy one of three statutory alternatives. In this case, the twins could not inherit under the relevant state's intestacy law (in this case, Florida) and could not qualify under the statutory alternatives.

Connecticut's intestacy laws do not directly address the inheritance rights of children posthumously conceived through artificial insemination. In some circumstances, however, Connecticut's probate laws do provide inheritance rights to a child born as a result of artificial insemination to which the deceased parent consented, even if the parent failed to provide for the child in his will.

To date, there is no Connecticut case law on record addressing this issue.

### **ASTRUE V. CAPATO**

Karen Capato gave birth to twins eighteen months after her husband, Robert Capato, died of cancer. Shortly after Robert was diagnosed, and before beginning chemotherapy, Robert deposited semen at a sperm bank. The sperm was frozen for future use through a process called cryopreservation. Robert died in Florida in March 2002, and Karen conceived the twins through in vitro fertilization (in which the egg is fertilized with the sperm in a petri dish and then implanted into the carrier's uterus) using Robert's sperm in August 2003.

Karen subsequently filed a claim for survivors insurance benefits on the twins' behalf. The SSA denied benefits, claiming that the Social Security Act only allowed posthumously conceived children to receive Social Security survivor benefits if the child was eligible to inherit from the deceased parent under the relevant state intestacy law. Florida's intestacy law specifies that a child conceived after a parent's death is not eligible to inherit unless the child was provided for in the parent's will (FLS § 742.17).

The trial court found in favor of the SSA, but the appeals court reversed the lower court's decision. On May 21, 2012, the U.S. Supreme Court issued a unanimous decision in favor of the SSA, thus reversing the appellate court's decision.

According to the U.S. Supreme Court, in order to qualify for Social Security survivor benefits, a person must either qualify as a child of the deceased insured parent under state intestacy laws (42 USC § 416(h)(2)(A)) or satisfy one of the statutory alternatives to the requirement, including:

1. if the applicant is a son or daughter of an insured deceased individual, but does not qualify as a child under state intestacy law, he or she must demonstrate that both parents went through a marriage ceremony that would have been valid except for certain legal impediments (42 USC § 416(h)(2)(B));
2. the insured deceased parent must have (a) acknowledged in writing that the person is his or her son or daughter; (b) been decreed by a court to be the person's father or mother; or (c) been ordered to pay child support (42 USC § 416(h)(3)(C)(i)); or

3. the person must prove that the insured deceased individual was his or her parent and was living with or contributing to the person's support when the insured individual died (42 USC § 416(h)(3)(C)(ii).

## **CONNECTICUT INTESTACY LAWS**

Connecticut law defines "artificial insemination" as a medical procedure in which the fertilization of a human egg is assisted through artificial means and includes, but is not limited to, intrauterine insemination (in which a catheter is inserted through the cervix into the uterus to deposit a sperm sample directly into the uterus) and in vitro fertilization (CGS § [45a-771a](#)).

Connecticut is one of several states in which the intestacy laws do not directly address the inheritance rights of children posthumously conceived through artificial insemination. Connecticut's probate laws do provide inheritance rights to a child born as a result of artificial insemination to which the deceased parent consented, even if the parent failed to provide for the child in his will. However, the child is not eligible to any share of the estate if:

1. it appears from the will that the omission was intentional or
2. the deceased parent provided for the omitted child by transfer outside of the will and the parent's intention is stated or reasonably inferred from the transfer amount or other evidence. (CGS § [45a-257b](#))

To date, there is no Connecticut case law on record addressing this issue. However, it is possible that a posthumously conceived child would be eligible for intestacy succession rights, provided the deceased parent consented to artificial insemination prior to death, because entitlement to such rights is not specifically prohibited in the statutes.

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